

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Complaint by Robert Mykytiuk

Docket No. DW 16 – 834

Motion to Deny Complaint and Exclude Irrelevant Evidence

Lakes Region Water Co., Inc. (“Lakes Region”), by and through Upton & Hatfield, LLP, moves to deny the complaint and exclude irrelevant and immaterial evidence offered by the complainant as follows:

1. **Summary.** The issues to be addressed in this proceeding are set forth in the Secretarial Letter of November 10, 2016, which states:

The Commission’s rules do not specifically address separate dwelling units and separate structures under N.H. Code Admin. Rule Puc 600 et seq. (rules for water service). **The Commission believes that a hearing on this matter will be useful in determining whether a separate base charge should be implemented and/or a separate meter installed.** As such, the Commission has granted your request for a hearing which will be held on December 14, 2016 at 10:00 a.m., and adopts the following procedures and determinations with respect to the hearing.

2. On November 30, 2016, the complainant, Robert Mykytiuk, submitted his summary of witness testimony. Mr. Mykytiuk did not list himself as a witness. Instead, he intends to present two witnesses to testify concerning New Hampshire’s accessory dwelling unit (“ADU”) law, which is not in effect until June 1, 2017. He also intends to call a third witness, Jake Dawson, a former employee of Lakes Region and now a “competitor” to LRW Water Services (“LRW”), to testify concerning Lakes Region’s bid practices and one property owned by McGuire, which appears to have two separate residences.

3. The evidence offered by Mr. Mykytiuk is entirely outside the scope of the issue to be addressed in this proceeding which is: “whether a separate base charge should be implemented and/or a separate meter installed”. The ADU statute, RSA 674:72 is not effective until June 1, 2017 and is a zoning law which governs the issuance of municipal building permits or other municipal approvals. As explained below, the second residence that Mr. Mykytiuk has constructed is not an ADU: it lacks an interior door as required by RSA 674:72, III and exceeds the Town’s *proposed* 1,000 square foot restriction on ADUs. The not-yet-in-effect ADU law and not-yet-adopted zoning amendment are immaterial and irrelevant to whether a separate base charge and a separate meter are required under Lakes Region’s Tariff and the laws and rules of the Commission. Lakes Region’s approved affiliate agreement with LRW is also outside the scope of issues noticed for this proceeding.

4. RSA 541-A:33, I, provides that the Commission “may exclude irrelevant, immaterial or unduly repetitious evidence.” Lakes Region moves to exclude the evidence proposed by Mr. Mykytiuk because it simply has no bearing on the only issue to be decided. Because the laws and rules governing this proceeding are clear, the time and expense are unnecessary and the complaint should be denied.

5. **The Commission’s Laws, Rules and Tariff Control.** The Commission has adopted specific rules which control the outcome of this proceeding: For example, Puc 606.04 (h) requires that all water utilities “shall require that the customer shall not install any tree or branch connection in the service pipe.” Puc 606.04 (j) requires that all water utilities “shall require” that “[n]o tandem services shall be permitted.” Puc 603.03 requires that a meter be

installed on all service lines, unless a waiver is granted.¹ As a result, a separate service line and meter are required by the Commission's rule.

6. The law prohibits water service at rates that are free or discounted. RSA 378:14 ("Free Service, Etc. – No public utility shall grant any free service, nor charge or receive a greater or lesser or different compensation for any service rendered to any person, firm or corporation than the compensation fixed for such service by the schedules on file with the commission and in effect at the time such service is rendered."); RSA 378:17. Requiring Lakes Region to serve Mr. Mykytiuk's two residences under a single base charge would result in him receiving free or discounted service in violation of RSA 378:14 & 17 and traditional rate making principles which require that rates be just and reasonable. *Pennichuck East Utilities, Order No. 25,051* (December 11, 2009) ("those customers would not be paying their fair share of the fixed costs that existing ... customers pay and the effect would be a subsidy").

7. Lakes Region's approved Tariff establishes rates for "water service" in each division. This means "water service" in compliance with the laws and rules of the Commission. Those rules *require* a separate service line for each residential, commercial or other customer. Branched or tandem "water service" is prohibited by Puc 606.04. The established rate in Lakes Region's Tariff requires that each separate residential, commercial or other customer pay both a base charge for "water service" to recover fixed costs and provide revenue stability *and* a consumption charge. Lakes Region's Tariff does not allow a customer to receive free or discounted "water service" by constructing branched or tandem services, in violation of the Commission's water service rules, to provide water service to two (or more) separate residences.

¹ "All water sold by a utility shall be billed on the basis of metered volume sales unless a waiver is granted by the commission pursuant to Puc 201.05 for unmetered service."

8. **The Testimony Offered Does Not Change the Outcome.** The specific testimony to be offered by Mr. Myktyiuk is simply irrelevant and immaterial under the laws and rules administered by the Commission. In particular:

a. **Kevin Quinlan.** Mr. Myktyiuk states that Kevin Quinlan will testify as follows:

“Mr. Quinlin is a member of the Town of Moultonboro's Master Plan Committee and is well versed with the Accessory Dwelling Unit RSA 674 which becomes effective June 1, 2017 as well as the Town of Moultonboro's ADU regulations which will be put before the town's legislative body in March of 2017.

In the case of both the municipality and the state, it is clearly written that separate water and sewer systems will not be required. As the President of the Balmoral Homeowners Association, Mr. Quinlin will state that the Association is opposed to the additional fixed customer charge which is not currently supported in Lakes Region Water Company Tariffs or the Public Utility Commission regulations in this case.

Mr. Quinlin will also testify to a previous conversation where Mr. Mason had stated that his profitability is dependent on his ability to recover his costs to operate Lakes Region Water Co. through the fixed rate charges and that he would need to get the new ADU exemption for separate water systems changed in Concord. This is also referred to in the PUC's explanation of how water and sewer rates are set. (see exhibit 1).”

RESPONSE: First, testimony concerning laws that are not yet in effect and that may not even pass Town meeting is, by definition, irrelevant and immaterial.

Second, the ADU law is a zoning law that governs municipal building permits. It is irrelevant and immaterial to the issues to be decided under the laws and rules administered by the Commission.

Third, the second residence constructed by Mr. Myktyiuk is not an ADU. The two residences lack an interior door² as required for an ADU by RSA 674:72, III which provides that: “An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit, but a municipality shall not require that it remain unlocked.” In addition, as Lakes Region Exhibits A & H show, the ‘accessory’ structure is 35 by 45, i.e. 1,575 square ft. This exceeds the Town’s proposed 1,000 sq. ft. restriction on ADUs.³ The point is that the ADU law is not in effect and may never be. The Town’s ADU ordinance is not in effect and may

² See Lakes Region Rebuttal Exhibit K (attached).

³ See Lakes Region Rebuttal Exhibit L (attached).

never be. Even if these laws were in effect, Mr. Mykytiuk's second residence is not an ADU.

Third, the interpretation of statutes governing water service is a question of law to be decided by the Commission based on the actual laws, not their interpretation by one or more Town officials.

Lastly, testimony from a planning board member as to how utility rates are set, or whether (or not) Mr. Mason felt that the ADU law should be changed is entirely irrelevant.

b. Karel Crawford. Mr. Mykytiuk states that Karel Crawford will testify as follows:

"Mrs. Karel Crawford as a State Representative in District 4, Carroll County was solicited by myself to assist in finding resolve to this matter after several attempts from a less than receptive Mr. Mark Naylor's office.

Mrs. Crawford will testify to the various conversations with Ms. Amanda Noonan and Ms. Leah Valladares that validate our argument that the PUC regulations and Lakes Region Water Co. tariffs are so vaguely written that aside from Ms. Valladares's interpretation, nothing clearly addresses an additional fixed rate fee for this bunkhouse. (see exhibits 2 & 3) Lakes Region Water Co. has interpreted both the PUC regulations and the Lakes Region Water Tariffs to their advantage so as to strong arm an additional fixed fee with the threat of water service disconnect if not paid.

Mrs. Crawford will also testify to the fact that the new RSA 674 which goes into effect June 1, 2017 will make this a moot point since the new law specifically states that separate water systems will not be required. (see exhibits 4 & 5)."

RESPONSE: First, conversations with Director Naylor, Leah Valladares, or others are "irrelevant and immaterial" to the issues to be decided in this case, which is whether a separate service line, meter and base charge are required under the laws administered by the Commission.

Second, as noted above, the ADU law and the Town's proposed ADU ordinance are not yet in effect. As noted above, Mr. Mykytiuk's second residence is not an ADU. It lacks an interior door and exceeds the 1,000 square feet. The ADU law is entirely irrelevant and immaterial to the issues to be decided under the laws and rules administered by the Commission.

Third, the interpretation of Lakes Region's tariff and the statutes and rules governing water service is a question of law to be decided by the Commission based on the actual laws, not by a single legislator.

c. **Jake Dawson.** Mr. Mykytiuk states that Jake Dawson will testify as follows:

“Mr. Jake Dawson has been an employee of Lakes Region Water Services and Lakes Region Water Company off and on for almost 13 years until May of 2014 when he started his own excavation company. Mr. Dawson has intimate knowledge of the operation of both Lakes Region Water Services which he now competes against and Lakes Region Water Company where he served as foreman for Mr. Mason.

Mr. Dawson will refute the last paragraph in exhibit 3 that states Lakes Region Water Company treats everyone the same way by showing that Mr. Steven McGuire's house not only has two water meters but has one service line that feeds both houses and he pays only one fixed rate fee. (see exhibit 6). Additionally Mr. Dawson will testify to the fact that the capital improvements being made by Lakes Region Water Company are not being put out to bid as required of a public utility and subsequently as a water customer I am undoubtedly paying more for the work that Lakes Region Water Services is doing.”

RESPONSE: First, Mr. Dawson’s experience as a competitor to LRW, an unregulated affiliate, is entirely outside the scope of this proceeding. Lakes Region has an *approved* affiliate agreement with LRW. Mr. Dawson’s views are on the subject are irrelevant and immaterial to the issues before the Commission.

Second, Mr. Dawson’s testimony concerning one customer, McGuire, is irrelevant and immaterial. Lakes Region agrees that Mr. McGuire *may* be subject to a second base charge. However, further investigation is needed. The second McGuire residence *may* pre-date the current requirement to install a separate meter and service line. Speculation as to how the Commission rules *may* apply to the McGuire residence is premature, irrelevant and immaterial. The question in this proceeding is whether, under *existing* laws and rules of the Commission administered by the Commission, “a separate base charge should be implemented and/or a separate meter installed” on the Mykytiuk property.

9. **Conclusion.** The Commission’s rules are clear that a separate service line is required for each customer residence and that ‘branching’ or ‘tandem’ service lines are prohibited. Puc 606.04 (h) & (j). A separate meter is required. Puc 603.03. Under Lakes Region’s Tariff, “water service” to a second residence in violation of Puc 606.04 would result in free or discounted service which is expressly prohibited under RSA 378:14 & 17 and contrary traditional rate making principles which require that each separate customer pay the rate for “water service” provided in the approved water utility Tariff.

10. The evidence to be offered by Mr. Mykytiuk is simply irrelevant and immaterial. The ADU law, RSA 674:72, is not in effect until June 1, 2017. The second Mykytiuk residence is not an ADU under RSA 674:72, III or the proposed Town Ordinance. RSA 674:72 governs the issuance of municipal building permits, not the rates or design requirements for public water utilities subject to regulation by DES and Commission. As a result, Lakes Region requests that the Commission exclude Mr. Mykytiuk's evidence as irrelevant and immaterial under RSA 541-A:33 and deny the complaint to avoid the unnecessary time and expense of a hearing.

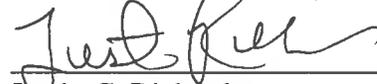
WHEREFORE Lakes Region respectfully requests that the Commission: (a) Deny the complaint by order or by secretarial letter; (b) Exclude the evidence offered by Mr. Mykytiuk as irrelevant and immaterial; and (c) Grant such other relief as justice may require.

Respectfully submitted,

LAKES REGION WATER
COMPANY, INC.

By its Counsel,

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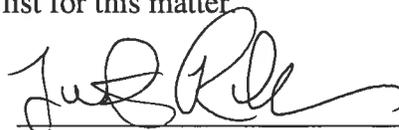
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Dated: December 1, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded via Electronic Mail to all persons on the Commission's official service list for this matter.

A handwritten signature in black ink, appearing to read "Justin C. Richardson", written over a horizontal line.

Justin C. Richardson